Christine Daniel
City Manager

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ACTION CALENDAR
September 18, 2012

To: Honorable Mayor and Members of the City Council

From: Christine Daniel, City Manager

Submitted by: Michael K. Meehan, Chief of Police

Subject: Consideration of Revisions to Policies Regarding BPD Mutual Aid Memoranda of Understanding (MOU) and Approval of 2012 Mutual Aid MOU Compendium

RECOMMENDATION

1. Review and comment on the following proposed new and amended policies drafted pursuant to the Council's direction at its June 19, 2012 meeting:
 a. Submittal of Suspicious Activity Reports (SARs) to the Northern California Regional Intelligence Center (NCRIC) (General Order N-17; Attachment 3),
 b. Immigration Detainers (General Order J-1; Attachment 4),
 c. Criminal Intelligence (General Order C-1; Attachment 5), and
 d. Mutual Aid (General Order M-2; Attachment 6).

2. Adopt the attached Resolution requiring review and approval by the City Council for grant applications for equipment costing more than $50,000, if the equipment is being provided to the Police Department through Urban Area Security Initiative (UASI) funds; and direct the City Manager to direct the Police Department to continue to follow its own policies and procedures when participating in UASI training, and to continue to send all UASI related training orders to the PRC for review.

3. Conduct a public hearing and upon conclusion, adopt the attached Resolution approving the 2012 Mutual Aid Memoranda of Understanding (MOU) Compendium as required by Berkeley Municipal Code Section 2.04.150 et. seq.

FISCAL IMPACT OF RECOMMENDATION

Thus far an estimated 300 hours of staff time has been devoted to the MOU binder approval process since October 2011. Moving forward, the additional reporting and review requirements created by the recommendations will require an estimated 50 to 100 hours of staff time annually. This estimate is based on an average year, and may fluctuate depending on police activity and events in a given year.

CURRENT SITUATION AND ITS EFFECTS

At its June 19, 2012 meeting, the City Council provided direction regarding a number of law enforcement policies related to the City's Mutual Aid Memoranda of Understanding with other agencies. The policies and resulting modifications are addressed below. The 2012 Mutual Aid Memoranda of Understanding Compendium is submitted for a public hearing and City Council approval at this meeting.

Amended Policies

Item 1: Suspicious Activity Reports Sent To NCRIC

The Council indicated that the current threshold for submitting Suspicious Activity Reports (SAR) to the NCRIC when specific individuals or groups are named was too low. The Council directed the department to follow federal guidelines in compliance with 28 CFR 23 and the 2007 Attorney General guidelines for criminal intelligence.

The following additional requirements regarding SAR's submissions were also discussed:

- Each SAR to be approved by the Chief of Police or a Captain,
- Each SAR to be logged with general, non-specific information including the reason for the submittal
- An annual report including all logged SAR's to be included in the annual submission of the MOU binder
- All SARs will be reviewed by the City Manager
- The NCRIC agreement, if verbal, be reduced to writing
- SARs will not be submitted in situations of non-violent civil disobedience
- The two last examples of Criteria Guidance as provided by NCRIC (Photography and Recruiting) are not to be included in the list of suspicious activity without a criminal predicate

The requirements above have been incorporated into a new proposed Order, General Order N-17 "Suspicious Activity Reporting and Relationship with the Northern California Regional Intelligence Center". In addition, the understanding with NCRIC was reduced to writing in the 2011 MOU Binder previously approved by Council.

Item 2: Urban Area Security Initiative (UASI)

Council directed staff to ensure the safeguarding of civil liberties in any UASI-related activity. To that end, the Berkeley Police Department will continue to comply with its own policies, and will only employ tactics consistent with Berkeley Police Department policies; Officers will remain under the command and control of the Berkeley Police Department and operate under the Berkeley Police Department's policies and procedures even if they are more restrictive than another department's procedures.

The Berkeley Police Department will continue to submit all training orders, including training sponsored by UASI, to the PRC. These training orders include the date, location and topic of the training, who is conducting the training and who will be attending. The Police Department will provide additional training materials, not including specific tactics, upon request. Additionally, the Berkeley Police Department will now clearly label the trainings sponsored by UASI to allow for ease of review by the PRC.

In response to Council's direction to provide additional transparency into UASI, staff has provided information to the PRC about the purpose of UASI including information about funding, training and preparedness and response coordination. Also, the Police Department's general understanding with UASI was reduced to writing in the 2011 MOU binder approved by Council.

Council directed the Police Department to report annually on all UASI grant applications including the details of the grant, the equipment obtained, and any trainings, exercises, or competitions attended. The Police Department will provide this information with the annual submission of the MOU Binder.

Council directed the City Manager and Police Department to establish a process for City Council approval of UASI grant applications prior to submission. Staff proposes the adoption of the attached Resolution establishing a requirement for Council review and approval of grant applications to UASI for equipment costing over $50,000.

Item 3: <u>General Order J-1 – Jail Policy</u>

The Council directed staff to review policy from Santa Clara County regarding ICE detainers and modify as needed for the City of Berkeley. To this end the Department has amended General Order J-1, Section 139 nearly in its entirety to incorporate language from the Santa Clara County policy. Some minor modifications were made to the Santa Clara County language, most significantly due to the fact the Santa Clara County Jail holds prisoners who serve their post-conviction sentences at that institution, while the Berkeley Jail is a temporary holding facility. The key sections of this policy include:

- Only honoring hold request of individuals arrested for serious or violent felony offenses* or;
- Individuals convicted of serious or violent offenses within 10 years of the detainer request; or, release after having served a sentence for a serious or violent offense within 5 years of the detainer request (whichever is shorter)
- Not permitting ICE agents access to individuals or allow them the use of City of Berkeley facilities or personnel for investigative or administrative purposes
- We did not include an exclusion for those under 18 years of age, as we are now only honoring holds for the most serious and violent felonies, regardless of age

- We did not include the language requiring a prior agreement with the federal government to reimburse costs, as this would necessitate a release of those serious and violent felons described in this policy.

**Serious violent felonies include felonies listed in Section1192.7 and 667.5 of the Penal Code (See Attachment 7, Penal Code Sections 1192.7 and 667.5)*

Therefore, in accordance with the Council's direction, modified language will replace the current Paragraph 139 of General Order J-1 (see Attachment 4, General Order J-1).

Item 4: General Order C-1 – Criminal Intelligence

The Council's direction was to adopt the PRC's recommendation to exempt individuals or groups engaged in suspected non-violent civil disobedience offenses from being subject to intelligence gathering.

In addition, Council directed staff to review and consider the adoption of the Attorney General's guidelines.

General Order C-1 was amended to incorporate additional reference to the Attorney General's guidelines, to provide further emphasis on criminal predicate requirements, and to affirm the prohibition against subjecting groups or individuals engaged in non-violent civil disobediences offenses from intelligence gathering (see Attachment 5, General Order C-1).

Item 5: General Order M-2 – Mutual Aid Policy

The Council's direction was to accept the PRC's recommendation to evaluate each mutual aid request to determine if there is a threat to public safety presented by the conduct of attendees at an event, or if only civil disobedience offenses are taking place. The Police Department has amended General Order M-2 to incorporate this recommendation (see Attachment 6, General Order M-2).

Council further directed the BPD to accept the PRC's recommendation to submit a report to Council regarding all mutual aid requests that involve civil disobedience offenses and First Amendment activity. Council further directed staff to change the requirement to an annual report. The Police Department has amended General Order M-2 to incorporate this recommendation, and will provide the report along with the annual submission of the MOU Binder.

Item 6: UCPD Agreement

The Council directed staff to work collaboratively with UCPD on consistency of procedures between the agencies, including towing of vehicles. This direction has been

implemented by way of a letter from BPD Chief Meehan to UCPD Chief Celaya affirming BPD's commitment to do so.

2012 Mutual Aid Memoranda of Understanding Compendium

Berkeley Municipal Code Sections 2.04.150 et. seq. requires the City Council to conduct a public hearing and approve Mutual Aid Memoranda of Understanding with other law enforcement agencies, police departments and private security organizations. Law enforcement activities and procedures within the City limits are a major matter of policy in the governance of the City. The general purpose for the Mutual Aid Memoranda of Understanding Compendium is to provide public disclosure and City Council approval of the terms and conditions or agreements, understandings, or policies reflecting such relationships, and for community involvement in the process of such approval. It is with this purpose that it is recommended that the City Council approve the 2012 Mutual Aid Memoranda of Understanding Compendium in its entirety.

BACKGROUND
On February 14, 2012, Council approved the remaining MOUs for 2011 between the Berkeley Police Department and NCRIC, UASI, and the University of California Police Department pursuant to the Berkeley Municipal Code section 2.04.150. Additionally, Council asked the City Manager and the Police Review Commission (PRC) to return to Council regarding several MOU issues set forth in Councilmember Arreguin's February 14, 2012 submittal to the Council.

Thereafter, on June 19, 2012, a Special Meeting was held regarding the MOUs. At the conclusion, Council directed staff to establish a process for City Council approval of grant applications to UASI. Council also directed staff to return in September with a new policy regarding submitting SARs to the NCRIC (Attachment 3 – General Order N-17), and amended policies regarding Immigration Detainers (Attachment 4 - General Order J-1 Section 139), Criminal Intelligence (Attachment 5 - General Order C-1), and Mutual Aid (Attachment 6 - General Order M-2).

RATIONALE FOR RECOMMENDATION
The policies discussed above are responsive to the Council's direction in June and the 2012 Memoranda of Understanding Compendium is consistent with those, and other City of Berkeley policies, and ready for the Council's approval.

ALTERNATIVE ACTIONS CONSIDERED
Alternatives were fully addressed in prior reports.

CONTACT PERSON
Michael K. Meehan, Chief of Police, 981-5700

Attachments:
1. Resolution (UASI Grants)
2. Resolution (2012 Mutual Aid MOU Approval)
 Exhibit A: 2012 Mutual Aid Memoranda of Understanding (MOU) Compendium
3. General Order N-17 NCRIC/SARS
4. General Order J-1 Section 139 Immigration Detainers
5. General Order C-1 Criminal Intelligence
6. General Order M-2 Mutual Aid
7. California Penal Code Sections 1192.7 and 667
8. Public Hearing Notice

RESOLUTION NO. ##,### – N.S.

REQUIRING CITY COUNCIL APPROVAL OF ANY EQUIPMENT GRANT OF MORE THAN $50,000 FROM THE BAY AREA URBAN AREA SECURITY INITIATIVE (UASI)

WHEREAS, the equipment provided to and utilized by the Berkeley Police Department must be consistent with the values of the Berkeley community, and

WHEREAS, the UASI has provided equipment to the Berkeley Police Department through the distribution of Federal Homeland Security funds, and may offer to do so in the future.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council shall review and approve any proposed acquisition of equipment prior to the Berkeley Police Department applying for said equipment, if that equipment is to be provided by a UASI funding source in an amount of more than $50,000.

RESOLUTION NO. ##,###-N.S.

APPROVING AGREEMENTS, LETTERS AND MEMORANDA OF UNDERSTANDING OR POLICIES, REVISED AND UPDATED FOR 2012, WHICH EXPRESS TERMS AND CONDITIONS OF MUTUAL AID, INFORMATION SHARING, COOPERATION AND ASSISTANCE BETWEEN THE BERKELEY POLICE DEPARTMENT AND ALL OTHER LOCAL, STATE AND FEDERAL LAW ENFORCEMENT, MILITARY AND/OR INTELLIGENCE AGENCIES, POLICE DEPARTMENTS OR PRIVATE SECURITY ORGANIZATIONS.

WHEREAS, the Berkeley Police Department has established written and verbal agreements, understandings and policies with other law enforcement agencies, police departments and other private security organizations; and

WHEREAS, such agreements, understandings and policies are needed to enhance investigative resources and emergency services provided to the citizens of Berkeley, creating a safer environment for all; and

WHEREAS, many of these agreements, understandings and policies have been in existence and approved by City Council since 1974.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the agreements, understandings and policies existing between the Berkeley Police Department and other law enforcement agencies revised and updated for 2012, a copy of which is attached hereto, marked Exhibit A and made part hereof, are hereby approved.

BE IT FURTHER RESOLVED that copies of the aforementioned documents be on file in the Office of the City Clerk.

Exhibit A:
2012 Mutual Aid Memoranda of Understanding (MOU) Compendium

Item #10a
Consideration of Revisions to Policies Regarding (BPD) Mutual Aid Memoranda of Understandings (MOU)and Approval of 2012 Mutual Aid MOU Compendium

Attachment 2, Exhibit A to this report - 2012 Mutual Aid Memoranda of Understanding (MOU) Compendium is on file and available for review at the City Clerk Department. It can also be accessed online from the City Council Website.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley, City Council's Web site
http://www.ci.berkeley.ca.us/citycouncil/

ATTACHMENT 3

BERKELEY POLICE DEPARTMENT

DRAFT ISSUE DATE: August 6, 2012 **GENERAL ORDER N-17**

SUBJECT: SUSPICIOUS ACTIVITY REPORTING AND RELATIONSHIP WITH THE NORTHERN CALIFORNIA REGIONAL INTELLIGENCE CENTER

PURPOSE

1 - The terrorist attacks of September 11, 2001, and subsequent attacks throughout the world have demonstrated the necessity of an organized and integrated information sharing system at all levels of law enforcement. In order to prevent, prepare for, respond to, and investigate potential acts of terrorism and other violent criminal threats, it is necessary to establish an efficient system of communication whereby critical information can be quickly disseminated within the Berkeley Police Department (BPD) and to various local, state and federal law enforcement agencies.

2 - National guidelines have been developed and implemented throughout the United States through the National Criminal Intelligence Sharing Plan, the Findings and Recommendations of the Suspicious Activity Report Support and Implementation Project and the Nationwide Suspicious Activity Reporting Initiative (NSI) to establish a means for the sharing of information, known as Suspicious Activity Reporting (SAR). The information sharing plan was developed by law enforcement agencies to establish an all-crimes approach to gathering, processing, reporting, analyzing, and sharing of suspicious activity related to potential terrorism and crime. By maximizing information from citizens, law enforcement, and public safety officials, criminal acts can be detected and disrupted and incidents that have occurred can be properly investigated.

3 - The Berkeley Police Department will continue to attempt to detect crime before it occurs, including terrorism, through various means such as Suspicious Activity Reporting (SAR). The SAR program will provide a format for the Department to accurately and appropriately gather record, analyze and share suspicious activity or, in cases of named or identified individuals or groups, information that gives rise to a reasonable suspicion of criminal activity, including those activities related to foreign or domestic terrorism.

LIMITATIONS

4 - If the information gathered is developed into criminal intelligence, the Department will ensure that the information privacy and legal rights of all persons will be recorded and maintained in strict compliance with existing federal, state and Department guidelines regarding criminal intelligence systems as defined in (28 Code of Federal Regulations (CFR), Part 23), the California Constitution and the California Attorney General's Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities and the California State Threat Assessment System Concept of Operations.

***Entire text is new**

5 - Non-violent civil disobedience is specifically exempted from SARs reporting, and such activities shall not be reported as SARs.

POLICY

6 - Effective immediately, all sworn BPD personnel will document incidents with an actual or potential terrorism nexus or other suspected criminal activity and submit those proposed Suspicious Activity Reports as outlined in this policy. All Department members will adhere to the procedures and responsibilities described in this policy whenever potential terrorism related activity is encountered, observed or reported.

DEFINITIONS

7 - Suspicious Activity: Behavior that may be indicative of intelligence gathering or pre-operational planning related to terrorism, or criminal activity. Suspicious behavior must have a criminal predicate (defined below), and must rise to the level of reasonable suspicion (defined below) in order to be reportable as a SAR in circumstances involving a named or indentified individual or group.

8 - Criminal Predicate: The standard by which the determination as to whether information may be used to create a SAR is made in circumstances involving a named or identified individual or group. It means that there exists a "reasonable suspicion" based on the analysis of legally obtained information that the subject of the information is or may be involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct. For the purposes of this order, infraction violations will not be considered sufficient to establish a criminal predicate. The underlying offense must amount to a misdemeanor or felony.

9 - Reasonable Suspicion: Information which, when viewed in its totality, leads a person with appropriate training, specialized knowledge, and/or experience to conclude that a person, association of persons, or organization is involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct.

PROCEDURES

10 - Examples of behaviors that could be reported as a SAR are as follows (all of these behaviors have been verified as behaviors which have preceded and been linked to actual terrorist incidents as well as common criminal acts):

ATTACHMENT 3

BERKELEY POLICE DEPARTMENT

DRAFT ISSUE DATE: August 6, 2012 **GENERAL ORDER N-17**

DEFINED CRIMINAL ACTIVITY AND POTENTIAL TERRORISM NEXUS ACTIVITY	
ISE-SAR CRITERIA GUIDANCE Category	**Description**
Breach/Attempted Intrusion	Unauthorized personnel attempting to or actually entering a restricted area or protected site. Impersonation of authorized personnel (e.g. police/security, janitor).
Misrepresentation	Presenting false or misusing insignia, documents, and/or identification, to misrepresent one's affiliation to cover possible illicit activity.
Theft/Loss/Diversion	Stealing or diverting something associated with a facility/infrastructure (e.g., badges, uniforms, identification, emergency vehicles, technology or documents {classified or unclassified}, which are proprietary to the facility).
Sabotage/Tampering/ Vandalism	Damaging, manipulating, or defacing part of a facility/infrastructure or protected site.
Cyber Attack	Compromising, or attempting to compromise or disrupt an organization's information technology infrastructure.
Expressed or Implied Threat	Communicating a spoken or written threat to damage or compromise a facility/infrastructure.
Aviation Activity	Operation of an aircraft in a manner that reasonably may be interpreted as suspicious, or posing a threat to people or property. Such operation may or may not be a violation of Federal Aviation Regulations.

***Entire text is new**

ATTACHMENT 3

BERKELEY POLICE DEPARTMENT

DRAFT ISSUE DATE: August 6, 2012 **GENERAL ORDER N-17**

POTENTIAL CRIMINAL OR NON-CRIMINAL ACTIVITY REQUIRING ADDITIONAL FACT INFORMATION DURING INVESTIGATION[1]	
Eliciting Information	Questioning individuals at a level beyond mere curiosity about particular facets of a facility's or building's purpose, operations, security procedures, etc., that would arouse suspicion in a reasonable person.
Testing or Probing of Security	Deliberate interactions with, or challenges to, installations, personnel, or systems that reveal physical, personnel or cyber security capabilities.

11 - **Examples of behavior which cannot be reported as a SAR** unless: 1) the activity rises to the level of criminal conduct, or 2) the person taking part in the activity is not identified, and therefore, not subject to possible investigation by state and federal investigative agencies:

Recruiting	Building of criminal operations teams and contacts, personnel data, banking data or travel data
Photography	Taking pictures or video of facilities, buildings, or infrastructure in a manner that would arouse suspicion in a reasonable person. Examples include taking pictures or video of infrequently used access points, personnel performing security functions (patrols, badge/vehicle checking), security-related equipment (perimeter fencing, security cameras), etc.

1 Note: These activities may be considered First Amendment-protected activities and should not be reported in a SAR or ISE-SAR absent articulable facts and circumstances that support the source agency's suspicion that the behavior observed is not innocent, but rather reasonably indicative of criminal activity associated with terrorism, including evidence of pre-operational planning related to terrorism. Race, ethnicity, national origin, or religious affiliation should not be considered as factors that create suspicion (although these factors may be used as specific suspect descriptions).

12 - Employee's Responsibilities: All personnel are reminded that Constitutional rights will be honored at all times and nothing in this policy diminishes Constitutional protections. Personnel are specifically reminded of Fourth Amendment protections and that persons cannot be arrested without probable cause, detained without reasonable suspicion, and that evidence cannot be seized except pursuant to a warrant or an existing recognized exception to the warrant requirement. Any BPD employee receiving any information regarding suspicious activity potentially related to terrorism shall:

(a) Notify their direct supervisor.

(b) Notify a department Terrorism Liaison Officer (TLO)

(c) Document the incident as described in this policy.

13 - Responsibilities of Supervisors: Upon notification that personnel have received information regarding a potential SAR, the BPD Supervisor shall:

(a) Determine if any further law enforcement response is needed, will consult with a BPD (TLO) if available and determine if immediate notifications to the Chief of Police, and/or the City Manager or his/her designee is required.

(b) Provide the information in written form to the TLO for consideration of SAR submittal.

(c) Review the reports and ensure the proper reporting has been completed.

14 - Responsibilities of the TLO and TLO Coordinator (TLOC): Terrorism Liaison Officers (TLOs) have received training in the identification, handling and reporting of potential terrorism related incidents. TLOs will be available as a resource for SAR related incidents.

(a) TLOs will review proposed SARs from officers, and supervisors, and forward them to the TLO Coordinator (TLOC) for further review. If the report meets sufficient criteria for submission as a SAR, the TLOC will submit it to the Operations Division Commander or his designee for submission approval.

(b) The TLOC shall maintain a written log of all SARs submitted, and prepare an annual report to be provided to City Council.

15 - Responsibilities of the Operations Division Commander:

(a) Review of proposed SARs, and approval/rejection as appropriate.

(b) Forward all SARs to the City Manager and Chief for review

(c) Ensure that a written log is maintained and an annual report prepared by the TLOC.

16 - Responsibilities of the NCRIC: It is the policy of the NCRIC to make every effort to accurately and appropriately gather, record, analyze, and disseminate information that could indicate activity or intentions related to threats to homeland security and submit such information to the Federal Bureau of Investigation – Joint Terrorism Task Force (FBI-JTTF) and the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI) in the form of an NSI suspicious activity report. These efforts shall be carried out in a manner that protects the information and the privacy, civil rights, and civil liberties of individuals. Suspicious activity information shall be recorded and maintained in strict compliance with existing federal and state guidelines.

17 - The NSI has established a unified process for reporting, tracking, and assessing terrorism-related SARs throughout the nation. The NSI adheres to the guidelines established by the Intelligence Reform and Terrorism Prevention Act and the Information Sharing Environment Suspicious Activity Reporting (ISE-SAR) Functional Standard. These guidelines call for all terrorism-related suspicious activity reporting to be routed through designated fusion centers for appropriate vetting and review before the information can be shared within the nationwide system. The NCRIC as a component of California's State Threat Assessment System has been designated as the review agents for all terrorism-related suspicious activity reporting in the region.

18 - The NCRIC will then make the decision to share the SAR information with the NSI based on the standards established by the NSI. The NCRIC is also responsible for ensuring that all TLOs, line officers and other first responders in the region have received appropriate training in the collection and reporting of terrorism-related suspicious activities and the responsibilities related to protection of privacy, civil rights and civil liberties of individuals. The NCRIC also works closely with the NSI Program Management Office to ensure a statewide implementation of suspicious activity reporting.

19 - Reporting a SAR: All Suspicious Activity Reports (SARs) will be submitted through the www.ncric.org website. When the SAR involves a criminal act or attempted criminal act, a written BPD police report shall be submitted (and BPD case number created) identifying the suspected criminal behavior and

referencing the systems and personnel notified of the SAR.

ATTACHMENT 4

BERKELEY POLICE DEPARTMENT

DATE REVISED: TBD **GENERAL ORDER J-1**

139- It is the policy of the Berkeley Police Department to honor civil detainer requests from the United States Immigration and Customs Enforcement (ICE) by holding adult inmates for an additional 24-hour period after they would otherwise be released in accordance with the following policy:

1. Upon written request by an Immigration Customs and Enforcement (ICE) agent to detain a Berkeley Jail inmate for suspected violations of federal civil immigration law, the Berkeley Police Department will exercise its discretion to honor the request if one of more of the following applies:

a. The individual has been arrested for a serious or violent felony offense for which he or she is currently in custody.

i. For purposes of the policy, a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code and a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code.

b. The individual has been convicted of a serious or violent felony within 10 years of the request, or was released after having served a sentence for a serious or violent felony within 5 years of the request, whichever is later.

i. If the individual has been convicted of a homicide crime, an immigration detainer request will be honored regardless of when the conviction occurred.

ii. This subsection also applies if the Berkeley Jail has been informed by a law enforcement agency, either directly or through a criminal justice database, that the individual has been convicted of serious or violent offense, which, if committed in this state, would have been punishable as a serious or violent felony.

2. Except as otherwise required by this policy or unless ICE agents have a criminal warrant, or City of Berkeley officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or be allowed to use City of Berkeley facilities for investigative interviews or other purposes, and City of Berkeley personnel shall not expend City time or resources responding to ICE inquires or communicating with ICE regarding individuals' incarceration status or release dates.

ATTACHMENT 5

BERKELEY POLICE DEPARTMENT

DATE REVISED: TBD **GENERAL ORDER C-1**

SUBJECT: INTELLIGENCE PROCEDURES FOR FIRST AMENDMENT ACTIVITIES

PURPOSE

1 - The purpose of this General Order is to provide guidance regarding intelligence gathering procedures and maintenance of intelligence files. Additionally, this Order addresses the investigation of individuals and groups involved in First Amendment protected activities, **and expressly limits such investigations to situations where a criminal predicate exists.**

CONSTITUTIONAL RESTRICTION TO CRIMINAL ACTIVITY

2 - **The United States and California Constitutions provide people with the right of: (1) privacy, (2) free expression, (3) and free association for any lawful purpose. The California Constitution expressly provides that "privacy" is an inalienable right.** The First Amendment of the US Constitution prohibits the government from making a law establishing a religion or prohibiting the free exercise of religion, abridging freedom of speech or the press, or preventing people from peaceable assembly (e.g. marches and picketing).

While there are certain categories of speech that are not protected (i.e., fighting words, defamation, etc.), these exceptions are limited and have been narrowly construed.

3 - Under these constitutional restrictions, intelligence gathering by the Police Department is only permitted to investigate criminal activity. Intelligence gathering should not include political, religious, or social views or activities of individuals or groups, unless such views or activities directly relate to criminal conduct.

POLICY

4 - It is the policy of the Berkeley Police Department to ensure that the First Amendment and privacy rights guaranteed by the US and California Constitutions are protected for all individuals and groups, including the press, and to permit police involvement in the exercise of those rights only to the extent necessary to provide for the legitimate needs of law enforcement in investigating criminal activity.

5 - The Berkeley Police Department will obtain, maintain, and use information from legal, reliable sources to meet the needs of the Department and the City of Berkeley in carrying out its efforts to protect the public and suppress criminal activity. When the group or individual being investigated is involved in constitutionally protected First Amendment activity, the Department will ensure there is reasonable suspicion that a criminal predicate exists.

6 - Officers involved in planning for, or responding to, any protest or event may utilize open source material and are encouraged to contact the individuals or groups organizing the public event in order to facilitate traffic control, crowd management, or other safety measures concerning the event. These measures would not be considered an investigation as defined by this order.

7 - The Berkeley Police Department recognizes its critical task in balancing the need for law enforcement in its efforts to protect the broader society, versus the need to safeguard individual rights guaranteed by a democratic process. At times, law enforcement may need to resort to the use of undercover operations, surveillance, and the use of informants to protect the public from groups espousing violence and/or wanton destruction of property.

FEDERAL AND STATE GUIDELINES

8 - The guidelines of this policy are based largely on the Californian Attorney General's Criminal Intelligence Guidelines, revised November 2007 and Title 28 Code of Federal Regulations, Part 23 (28 CFR 23). **To the extent this Order is more restrictive than the Attorney General's guidelines or 28 CFR 23, this Order must be adhered to.**

DEFINITIONS

9 - Criminal Predicate: The standard by which the determination as to whether information may be used to create an intelligence file is made. It means that there exists a "reasonable suspicion" based on the analysis of legally obtained information that the subject of the information is or may be involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct. For the purposes of this order, infraction violations will not be considered sufficient to establish a criminal predicate. The underlying offense must amount to a misdemeanor or felony.

10 - Reasonable Suspicion: Information which, when viewed in its totality, leads a person with appropriate training, specialized knowledge, and/or experience to conclude that a person, association of persons, or organization is involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct.

11 - Open Source: An Open Source is any source of news or information that could normally be accessed by any member of the public. Examples include the television news, newspapers, speeches at any public gathering or event, the Internet, the public in the form of casual conversations and information brought forward during routine contacts, the radio, billboards, and flyers. Open Source information does not include meetings, such as planning meetings or closed-door

meetings, where First Amendment protected activities are involved, unless the officers are in uniform and have been invited or are otherwise in a place they have a lawful right to be.

12 - Informant: Informants are non-law enforcement, non-City employees who are specifically gathering information on behalf of the Berkeley Police Department and at the request of the Berkeley Police Department.

13 - Videotaping: Videotaping, for the purposes of this order, means the videotaping (whether surreptitious or in plain sight) of individuals or groups involved in First Amendment related activities.

INTELLIGENCE GATHERING

14 - Open Sources:

(a) Open Source information can be accessed at any time by any member of the Department without reporting requirements, unless otherwise required outside of this policy. Accessing open source information does not constitute an investigation as defined by this policy. However, files on groups or organizations containing open source material shall not be created and maintained, absent a criminal predicate.

(b) Open Source information should be validated in compliance with the California Attorney General's Criminal Intelligence Guidelines and Title 28 Code of Federal Regulations, Part 23 (28 CFR 23).

15 - Use of Plainclothes Officers:

(a) **Where the activity is First Amendment related, plainclothes officers may only be used where there is a reasonable suspicion of criminal activity arising to acts of violence, destruction of property, or a threat to public safety.** Plainclothes officers may also be utilized **within** crowds in public places involved in First Amendment related activities, **but** only in order to determine the best response for Police to safely address traffic-related issues because they would potentially be in danger even in uniform. In this situation, the plainclothes officers would not be gathering any specific information about the group or individuals, unless criminal activity occurred, just general information such as direction of travel, crowd size estimates, and destination.

(1) Plainclothes officers shall not be utilized at meetings, such as planning meetings or closed-door meetings where First Amendment related activities are involved, except as noted above~~,~~

(2) Use of plainclothes officers at planning-meetings, or closed-door meetings where First Amendment related activities are involved

shall require prior approval of the Chief of Police.

(3) Plainclothes officers shall not, in any circumstance:

(i) Participate in acts of violence or unlawful acts

(ii) Use unlawful techniques to obtain information

(iii) Initiate, propose or suggest, encourage, or incite criminal acts or plans to commit criminal acts

(iv) Assume a leadership position or intentionally cause dissension within an organization

(v) Attend meetings or engage in other activities for the purpose of obtaining legally-privileged information, such as confidential sources of reporters, attorney-client communications, or physician-patient communications

16 - Use of Informants: Informants may be utilized in First Amendment related activities where there is reasonable suspicion **of criminal activity arising to acts of violence, destruction of property, or a threat to public safety.**

(a) Informants shall not be utilized at meetings, such as planning meetings or closed-door meetings where First Amendment related activities are involved, except as noted above.

(b) Use of informants where First Amendment related activities are involved would require prior approval of the Chief of Police and reasonable suspicion of a criminal predicate.

(c) Information from informants should be validated in compliance with the California Attorney General's Criminal Intelligence Guidelines and Title 28 Code of Federal Regulations, Part 23 (28 CFR 23).

(d) Informants shall be directed not to:

(1) Participate in acts of violence or unlawful acts

(2) Use unlawful techniques-to obtain information

(3) Initiate, propose or suggest, encourage, or incite criminal acts or plans to commit criminal acts

(4) Assume a leadership position or intentionally cause dissension within an organization

(5) Attend meetings or engage in other activities for the purpose of obtaining legally-privileged information, such as confidential sources of reporters, attorney-client communications, or physician-patient communications

17 - Videotaping: Videotaping is a useful tool with which to gather evidence in criminal cases and non-criminal civil complaints against the City. It is often difficult to ascertain whether criminal activity is going to break out during a protest, march, or during other protected First Amendment related activities. Additionally, due to the contentious nature of many of these events, there is often City liability involved, or the potential for allegations of police misconduct. Videotaping these events serves to protect both the City and the various constituents involved in these events. As such the Berkeley Police Department will routinely videotape protests, marches and other acts of protected First Amendment related activities that occur in public places.

(a) In the event that no criminal predicate exists, no discernible civil liability can be discovered, and no personnel complaint is received, the tapes, if they are maintained, will only be maintained as a training tool. Tape that is not used for training shall be destroyed within 90 days of the incident, unless such tape is requested to be preserved as part of a personnel complaint, civil or criminal investigation or case.

(b) Whenever possible, the videotaping will occur in a manner-that minimizes interference with people lawfully participating in First Amendment activity. Individuals shall not be singled out for videotaping or photographing because of their religious or political views.

DEMONSTRATIONS

18 - The Police Department will not investigate or gather intelligence of a planned demonstration from non-open sources, unless there is reasonable suspicion that the demonstration will result in criminal activity rising to acts of violence, destruction of property, or a threat to public safety. The anticipation of acts of non-violent civil disobedience alone, without an accompanying threat to public safety, shall not be a basis to investigate or gather intelligence of a planned demonstration, other than from open sources for purposes such as estimating the time, size, and route of the demonstration.

INTELLIGENCE FILES

19 - Intelligence Files are covered by this Order. The creation of intelligence files when investigating individuals and groups involved in First Amendment protected activities where a criminal predicate exists, shall meet the below criteria.

However, an intelligence file shall not be opened for reasonable suspicion of non-violent civil disobedience that is only a misdemeanor and does not pose a threat to public safety.

(a) An intelligence file will consist of analyzed data from sources ranging from "open source", as defined in paragraph 11, to "confidential" (such as informants and classified reports). The only limits Title 28 CFR 23 places on data that may be analyzed are:

(1) It must be legally obtained.

(2) Title 28 CFR 23 states that an intelligence file may not include information about political, religious or social views, associations or activities unless such information is related to definable criminal conduct or activity and the subject of the information is reasonably suspected of involvement in that conduct or activity.

(3) The California Attorney General Guidelines.

(b) Once data has been lawfully collected, it goes through several steps that will terminate in one of three results:

(1) Destruction of the data because there is no criminal predicate

(2) Destruction of the data after five years because there is no longer a criminal predicate at that time

(3) **Retention of the data** based on a criminal predicate.

20 - Information Access and Dissemination: Those personnel authorized to access and disseminate criminal intelligence file information shall insure that prior to disseminating or allowing access to criminal intelligence file information that the requestor has:

(a) The Right to Know: Requester has the right to obtain intelligence information because of his or her status (e.g., a sworn member of a law enforcement agency) or pursuant to a court order, statue, or case law.

(b) Need to Know: Requester has an articulated need to obtain specific intelligence information in order to execute official law enforcement responsibilities or because the court order, statute; or case law establishes such a need to know.

(c) Access should never be granted when a requester has satisfied only one of these criteria.

AUTHORIZATION

21 - When possible, in all cases involving an investigation into individuals or groups exercising Constitutionally protected First Amendment activities, approval will be obtained from the Chief of Police, or in his/her absence a division commander, prior to the initiation of an investigation. An approval period will last for 90 days. Any investigation that continues for more than 90 days must receive approvals from the Chief of Police at every 90-day interval.

(a) If it is impractical to obtain prior approval, the Chief of Police shall be notified in a timely manner. Investigations shall only be initiated, where there is reasonable suspicion of planned, on-going, or prior criminal activity.

(b) The Chief of Police will notify the City Manager of all investigations that are covered by this order.

OUTSIDE AGENCIES

22 - The Berkeley Police Department will only cooperate with outside agencies consistent with this policy, the California Attorney General's Criminal Intelligence Guidelines and Title 28 Code of Federal Regulations, Part 23. Officers will follow this policy at all times when engaged in cooperative efforts with another agency.

AUDIT AND REPORTING

23 - On an annual basis, the Chief of Police shall review the Department's files, records and documents to determine whether the Department is in compliance with these regulations. The Chief of Police shall prepare a confidential summary report to the City Manager regarding all investigations conducted by the Police Department pursuant to this order.

24 - The Chief of Police shall prepare a statistical report annually for the Police Review Commission that will include the following information:

(a) The number of investigations authorized during the prior year;

(b) The number of authorizations sought but denied;

(c) The number of times that undercover officers were used;

(d) The number of unlawful activities investigated;

(e) Arrest and violation information for completed investigations;

(f) The number of requests for information from outside agencies for

information relating to investigations conducted pursuant to this order.

References: 28 Code of Federal Regulations, Part 23
California Attorney General's Criminal Intelligence File Guidelines, Office of the Attorney General, California Department of Justice, Division of Law Enforcement Criminal Intelligence Bureau, November 2007.

ATTACHMENT 6

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 5, 2012 **GENERAL ORDER M-2**

SUBJECT: MUTUAL AID AND AGREEMENTS WITH LAW ENFORCEMENT AGENCIES

PURPOSE

1 - The purpose of this General Order is to describe Mutual Aid procedures and written agreements that the Berkeley Police Department has with other law enforcement agencies. **It is also to provide guidance to the Command Staff members regarding the philosophy of Mutual Aid application.**

POLICY

2 - Berkeley Police Department employees are expected to follow the procedures of the California Law Enforcement Mutual Aid Plan as well as the written agreements made with other law enforcement agencies. **The Berkeley Police Department is also expected to take an event management approach to crowd control situations, and to evaluate the threat to public safety posed by each group prior to responding to, or requesting Mutual Aid.**

MUTUAL AID

3 - California's Law Enforcement Mutual Aid Plan was formulated in the early 1950's and enacted into law as part of the Government Code in 1970. The authority of the State of California Law Enforcement Mutual Aid Plan is granted under California Government Code Sections 8550, 8569, 8616, and 8668. The Berkeley City Council grants authority to the Police Department for mutual aid participation in accordance with Berkeley Municipal Code Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS, 1973).

(a) The California Law Enforcement Mutual Aid Plan is contained in a **compendium** titled, "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".

(1) **Copies are publically available on line through the City of Berkeley website.**

PROCEDURES

4 - All requests for mutual aid will be made via the Alameda County Sheriff, and all responses to mutual aid will result from mutual aid notification from the Alameda County Sheriff.

(a) When the Chief of Police determines that an emergency situation may become or is already beyond the control of Departmental resources, it is the Chief of Police's responsibility to request mutual aid from the Alameda County

Sheriff. Generally, this process will be authorized by the Chief of Police in conjunction with notification of and approval by the City Manager.

I. The Chief or his/her designee will also attempt to determine if the only crimes being committed are civil disobedience offenses, and whether these offenses pose a threat to public safety.

II. If individuals are committing crimes that do not present a threat to public safety the Chief or his/her designee should seriously evaluate whether or not the Berkeley Police Department should request or participate in Mutual Aid. Crimes which do present a threat to public safety include property damage, utilizing weapons, creating physical hazards, or threats to community members or public safety personnel.

(b) It is the responsibility of the Alameda County Sheriff to provide assistance and coordination to control the problem (California Government Code Section 26602).

(1) It is also possible to obtain other services from the Alameda County Sheriff (such as a bus for prisoner transportation at a small demonstration) without invoking mutual aid.

5 - To request Mutual Aid from the Alameda County Sheriff, the Berkeley Police Department must:

(a) Place all Berkeley Police Department sworn personnel on the following shifts: 12 hours on and 12 hours off.

(b) Contact the Alameda County Sheriff Emergency Services Unit, 667-7755, and verbally request mutual aid.

(c) Send a*written message to the Alameda County Sheriff's Department. (FAX is acceptable.)*

(d) Meet with Alameda County Sheriff's Department Mutual Aid personnel to discuss, plan, and coordinate the use of outside personnel regarding:

(1) The dates and times that mutual aid personnel are required.

(2) The number of personnel needed to assist.

(3) The staging area for responding personnel to meet.

(4) Mass processing procedures for persons arrested.

(5) Transportation plans for persons arrested.

(6) Operation of temporary detention facilities, if needed.

(e) An estimate of the number of available personnel in each agency is maintained by the Alameda County Sheriff's Department. The Alameda County Sheriff's Department will poll local agencies to obtain the necessary number of officers requested at the time of each incident.

6 - Costs for mutual aid are the responsibility of each agency participating. In the case of State or Federal involvement, mutual aid costs will be paid for by the State/Federal government.

REQUESTING STATE MUTUAL AID ASSISTANCE

7 - The Law Enforcement Division of the State of California Office of Emergency Services (OES) is responsible for coordination of State resources in support of local law enforcement during "unusual occurrences" such as disorders, demonstrations, riots, and natural or war caused disturbances. Authority is granted to OES under Article 5, Chapter 7, of the California Government Code. A 24-hour communications center is maintained at the Office of Emergency Services in Sacramento. A representative of the Law Enforcement Division can be reached at any hour of the day or night by calling (1-916) 427-4235 or 427-4341.

(a) Five State agencies have specific responsibilities to support local law enforcement during emergency situations:

(1) The California Highway Patrol: Provide traffic control and maintenance of law and order.

(2) The State Military Department, which includes the California Army and Air National Guard, the State Military Reserve and the Naval Militia: Provide military support to local jurisdictions only after a request for same is made by the Chief Executive (City Manager) of a City or County Sheriff, and only after the disturbance is beyond the capabilities of local law enforcement mutual aid forces.

(3) The Department of Justice: Provide legal advice and intelligence.

(4) The Department of Corrections: Provide support for local law enforcement (with resources).

(5) Office of the California State Police: Provide personnel who remain

under the command of the State Police.

REQUESTING FEDERAL MUTUAL AID ASSISTANCE

8 - Only State government may make the request to the President to provide Federal resources to assist in restoring or maintaining law and order. State government may only make such requests after all of its available forces, including the State military, are unable to control the emergency. The Department of the Army has the responsibility for the temporary loan of Federal military resources to National Guard units and local civil authorities in anticipation of or during disturbances.

9 - The Berkeley City Council reviews and approves agreements with other law enforcement agencies pursuant to California Government Code Section 8617, and in accordance with Berkeley Municipal Code (BMC) Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS 1973).

(a) Written agreements are maintained with agencies who have concurrent jurisdictions in Berkeley, as well as agencies who have "understandings" with the Berkeley Police Department.

(1) The agreements are maintained in a **compendium** entitled: "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".

(a) **The compendium is publically available from the City of Berkeley website.**

(b) A list of the agreements with other agencies is listed in the table of contents.

(b) **The Berkeley Police Department will provide a report to Berkeley City Council summarizing all requests, responses, and denials of requests for Mutual Aid that involve civil disobedience offenses and First Amendment activity -- submitted in conjunction with the agreements contained in the above referenced compendium which is submitted annually as per BMC Sections 2.04.150 - 2.04.210**

ATTACHMENT 7

CALIFORNIA PENAL CODE

Section 1192.7

(a) (1) It is the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under a "one strike," "three strikes" or habitual sex offender statute instead of engaging in plea bargaining over those offenses.

(2) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(3) If the indictment or information charges the defendant with a violent sex crime, as listed in subdivision (c) of Section 667.61, that could be prosecuted under Sections 269, 288.7, subdivisions (b) through (i) of Section 667, Section 667.61, or 667.71, plea bargaining is prohibited unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. At the time of presenting the agreement to the court, the district attorney shall state on the record why a sentence under one of those sections was not sought.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under 14 years of age; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with

a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) any burglary of the first degree; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the

person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

ATTACHMENT 7

CALIFORNIA PENAL CODE

Section 667.5

Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail under subdivision (h) of Section 1170 is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term or county jail term imposed under subdivision (h) of Section 1170 or when sentence is not suspended for any felony; provided that no additional term shall be imposed under this subdivision for any prison term or county jail term imposed under subdivision (h) of Section 1170 or when sentence is not suspended prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under subdivision (h) of Section 1170 or any felony sentence that is not suspended. A term imposed under the provisions of paragraph (5) of subdivision (h) of Section 1170, wherein a portion of the term is suspended by the court to allow postrelease supervision, shall qualify as a prior county jail term for the purposes of the one-year enhancement.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy as defined in subdivision (c) or (d) of Section 286.

(5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.

(6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.

(12) Attempted murder.

(13) A violation of Section 18745, 18750, or 18755.

(14) Kidnapping.

(15) Assault with the intent to commit a specified felony, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve

a prior separate term in state prison or in county jail under subdivision (h) of Section 1170.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison or in county jail under subdivision (h) of Section 1170 if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) (1) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

(2) This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

Police Department Agreements With Other Law Enforcement Agencies, Police Departments or Private Security Organizations

Notice is hereby given by the City Council of the City of Berkeley that on **September 18, 2012,** a public hearing will be held in which the Police Department will request that the City Council adopt a Resolution approving agreements, understandings or policies between the Police Department and other local, state and federal law enforcement agencies, military and/or intelligence agencies, police departments and private security organizations, as required by Berkeley Municipal Code 2.04.150, et. seq. The hearing will be held in the City Council chambers, 2134 Martin Luther King, Jr. Way at 7:00 p.m.

A copy of the agenda material for this hearing will be available at the City Clerk's Office and on the City's website at www.CityofBerkeley.info as of **September 6, 2012.**

For further information, please contact Sergeant Chris Stines, Police Department, Professional Standards Division at 510-981-5974.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet. Comments received no later than Tuesday, September 4, 2012 will be included in Council agenda packets. Communications received after that date but by 5:00 p.m. on Tuesday, September 11, 2012 will be distributed to Council in a supplemental packet five days before the meeting. Communications received less than seven days before the Council meeting but prior to noon on the day of the meeting, will be distributed at the Council meeting. Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. ***Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.*** *If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication.*

Please contact the City Clerk at 981-6908 or clerk@cityofberkeley.info for further information.
If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.

Published: The Berkeley Voice – 9/7/12 and 9/14/12
California Government Code §6062(a)

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on 9/6/12.

Mark Numainville, CMC, Acting City Clerk
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